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GROUP 3600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/544,508
Filing Date: April 06, 2000
Appellant(s): WYATT, PHIL

Brian Mattson
(Reg. No. 35,018)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 27 August 2007 appealing from the Office
action mailed 3 August 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

09/544,509 was appealed on September 15, 2003.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Art Unit: 3639

6,356,874	Ohrn	3-2002
4,135,241	Stannis et al	1-1979
6,289,088	BRUNO et al	9-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9-1. Claims 1-2, 4-9, 14-17, 19 are rejected under 35 U.S.C. 103(a) as being anticipated by Ohrn (6,356,874) in view of Stanis et al ('4,135,241).

As per Claim 1, 14.

Ohrn ('874) discloses:

providing a network, see column 7, lines 60-66 and figure 1;

providing a database connected to the computer network, see figure 1;

inputting bed availability information for a plurality of healthcare facilities, wherein each of the plurality of healthcare facilities have beds for providing a plurality of types of medical care and further wherein the bed availability information is input into the database and is accessible by the computer network, see column 6, lines 6-45, column 7, lines 60-66 and column 10, lines 22-30;

providing a first access to the database for determining the available bed for the patient by a user of the database, see column 6, lines 6-45 and column 21, lines 29-34,

searching the bed availability information for the plurality of healthcare facilities in the database, see column 5, lines 37-63;

determining the available bed based on user preferences, see column 5 lines 37-63.

Ohrn ('874) does not specifically disclose entering individual medical condition of a patient and searching, matching the bed to the condition.

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Stanis et al ('241) teaches searching for availability of beds, including reserving beds, and the information about the bed, including data regarding the nursing station to which it is associated, and matching, see column 3, lines 14-25 and column 21, lines 29-34 for the benefit of managing the status of beds in a hospital.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to include matching patient conditions to available beds in the invention of Ohrn ('874) as taught by Stanis et al ('241) for the benefit of accurately placing patients in the correct ward.

As per Claim 2.

Ohrn ('874) further discloses providing the database on a network, see figure 1.

As per Claim 4.

Ohrn ('874) further discloses contacting one of the healthcare facilities after retrieving information about the healthcare facility, see column 10, lines 22-30 and column 5, lines 37-45.

As per Claim 5.

Ohrn ('874) further discloses providing a remote server storing the database, see figure 1.

As per Claim 6.

Ohrn ('874) further discloses providing a second access to the database wherein an extended care or a healthcare facility having beds enters the bed availability into the database via the second access, see column 7, lines 44-50 and column 10, lines 22-30.

As per Claim 7, 19.

Ohrn ('874) further discloses an individual healthcare facility accesses the database to input the bed availability information for the individual healthcare facility, see column 7, lines 44-50 and column 10, lines 22-30.

As per Claim 8, 15.

Ohrn ('874) does not specifically disclose bed availability includes a quantity of beds.

Stanis et al ('241) teaches a quantity of empty beds available, see column 7, line 43 – column 8, line 8 and column 3, lines 14-25 for the benefit of managing the status of beds in a hospital.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to include a quantity of beds available in the invention of Ohrn ('874) as taught by Stanis et al ('241) for the benefit of managing the status of beds in a hospital.

As per Claim 9, 16.

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Ohrn ('874) does not specifically disclose bed availability includes types of beds available.

Stanis et al ('241) teaches a types of beds, see column 7, line 43 – column 8, line 8 and column 3, lines 14-25 for the benefit of managing the status of beds in a hospital.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to include a quantity of beds available in the invention of Ohrn ('874) as taught by Stanis et al ('241) for the benefit of managing the status of beds in a hospital.

As per Claim 17.

Ohrn ('874) further discloses the bed availability information includes a projection of expected availability of beds at a facility in a specified time frame, see column 5, lines 37-63.

9-2. Claims 3, 10, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohrn (6,356,874) in view of Stanis et al ('241) further in view of Bruno et al (6,289,088).

As per Claim 3.

Ohrn ('874) does not specifically disclose the network is the internet.

Bruno et al ('088) teaches use of the internet as a less expensive alternative to long distance service, see column 5, lines 34-56.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use the internet as a less expensive alternate network as taught by Bruno et al ('088) in the invention of Ohrn ('874).

As per Claim 10.

Ohrn ('874) further discloses an online form for accessing the database and inputting information, see figure 3.

Ohrn ('874) does not specifically disclose the network is the internet.

Bruno et al ('088) teaches use of the internet as a less expensive alternative to long distance service, see column 5, lines 34-56.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use the internet as a less expensive alternate network as taught by Bruno et al ('088) in the invention of Ohrn ('874).

As per Claim 18.

Ohrn ('874) further discloses an online form for accessing the database and inputting information, see figure 3.

Ohrn ('874) does not specifically disclose the network is the internet.

Bruno et al ('088) teaches use of the internet as a less expensive alternative to long distance service, see column 5, lines 34-56.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use the internet as a less expensive alternate network as taught by Bruno et al ('088) in the invention of Ohrn ('874).

(10) Response to Argument

10-1. Applicant's arguments that the Ohrn and Stannis et al references cannot be combined is not convincing. Applicant argues that the systems teach away from one another. Examiner disagrees, the technology of Stannis is seen to automate the hospital environment, though during an earlier, punch card era. Ohrn is a modern web interface into the back office aspects of a hospital. Webifying back office systems is well known for the integration of newer and older systems and would have been obvious to one of ordinary skill in the art at the time the invention was made.

10-2 Applicant's argument that Stennis et al teaches only one health care provider rather than a plurality of providers is convincing. However, Ohrn is relied upon to teach the plurality of providers, see column 5, lines 37-41 (those hotels which have vacant rooms), Stennis et al is relied upon for the teaching of the healthcare provider with vacant rooms.

10-3 Applicant's argument that neither Ohrn nor Stennis et al teach a plurality of types of medical care is not convincing, Ohrn column 10, lines 27-30, discloses admissions to hospitals and operations, Stennis et al teaches different nursing stations, see column 7, lines 59-61 and searching for beds based on need for special attention or service, see column 21, lines 27-29. Further it is well known that hospitals have different wards, such as Maternity, Oncology, Cardiac Care etc, which provide different types of medical care to serve different types of patients with a need for special attention or service.

10-4. Applicant's arguments that Stanis et al reference does not disclose the claimed matching is not convincing, the matching feature is disclosed in column 21, lines 29-34, specifically line 27-28 discloses matching based on "nursing station and control characters indicating a need for special attention or service" which are seen to be applicant's claimed medical condition.

10-5 In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

10-6 Claim 14 differs from Claim 1 in that it does not include the same level of detail as claim 1 regarding medical condition of the patient, but merely patient data, further it is an apparatus claim and therefore must be distinguished by structure.

10-7. Claims Directed to an Apparatus must be distinguished from the prior art in terms of structure rather than function, *In re Danly* 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959).

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the

claim. *Ex parte Masham*, 2 USPQ2d 1657 (bd Pat. App. & Inter. 1987). Thus the structural limitations of claim 14-19, including a network, a database, an input means, means for searching, comparing, matching and retrieving are disclosed in Ohrn in view of Stannis et al as described herein. Also as described the limitations of the claim do not distinguish the claimed apparatus from the prior art.

10-8. As per Claim 5, applicant's arguments regarding a remote database are not convincing. Ohrn teaches a central data processing device with a database, see figure 1 that is remote from the user terminal.

10-9. As per Claim 6, applicant's arguments regarding a second access to the database is not convincing, see column 7, lines 44-50 and column 10, lines 22-30, that the update is made automatically is seen to be a second access.

10-10. As per Claims 7, 19, applicant's arguments regarding access to input bed availability is not convincing, see column 7, lines 44-50 and column 10, lines 22-30, that the update is made automatically is seen to be input of bed availability.

10-11. As per Claims 8, 15, applicant's arguments regarding a empty bed available is not convincing, Ohrn discloses empty rooms, but not empty beds, but Stennis et al does, see column 7, line 43 – column 8, line 8 and column 3, lines 14-25 for the benefit of managing the status of beds in a hospital.

10-12. As per Claims 9, 16, applicant's arguments regarding types of beds is not convincing. Ohrn does not disclose types of beds, but Stennis et al does, see column 7, line 43 – column 8, line 8 and column 3, lines 14-25 for the benefit of managing the status of beds in a hospital.

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10-13. As per Claim 17, applicant's regarding a projection of expected availability is not convincing. Ohrn discloses expected availability in a specified time frame, see column 5, lines 37-63.

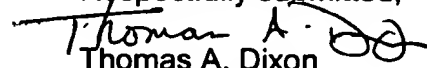
10-14. As per claims 3, 10, 18, applicant's arguments regarding the status of the internet and websites as being old and well known at the time of applicant's invention are not convincing. The internet was old and well known by the April 2000 filing date, regardless, Bruno discloses the internet, see column 5, lines 34-56.

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

For the above reasons, it is believed that the rejections should be sustained.

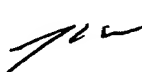
Respectfully submitted,


Thomas A. Dixon
Primary Examiner
Art Unit 3629

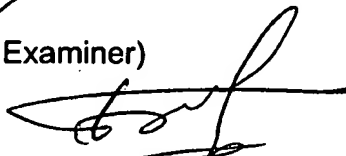
May 4, 2006

Conferees

John Weiss (SPE)

 5-9-06

Igor Borisov (Primary Examiner)



Patents+TMS
A Professional Corporation
1914 N Milwaukee Avenue
3rd Floor
Chicago, IL 60647

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PHIL WYATT

Appeal No. 2004-1826
Application No. 09/544,509

ON BRIEF

MAILED

MAR 18 2005

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Before OWENS, RUGGIERO, and DIXON, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from the final rejection of claims 1-20, which are all of the claims in the application.

THE INVENTION

The appellant claims a method and system for disclosing, in response to a query related to a medical condition, a medical resource, such as a doctor or a hospital, that treats the medical condition queried. Claim 1, which claims the method, is illustrative:

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Application No. 09/544,509

1. A method for matching medical condition information with a medical resource, the method comprising the steps of:
 providing a computer network having a plurality of remote computers and at least one remote server wherein the remote server hosts a website;
 accessing the website via an individual remote computer on the computer network;
 inputting a query into the website wherein the query relates to a medical condition;
 providing a database on the remote server wherein the database stores information relating to a plurality of medical conditions; and
 searching the database for the information wherein the search is based on the query input into the database and further wherein the search discloses a medical resource that treats the medical condition queried.

THE REFERENCES

Siegrist, Jr. et al. (Siegrist)	5,652,842	Jul. 29, 1997
Schlueter, Jr. et al. (Schlueter)	5,974,124	Oct. 26, 1999
Iliff	6,022,315	Feb. 8, 2000

THE REJECTIONS

The claims stand rejected under 35 U.S.C. § 103 as follows:
claims 1-11 and 13-20 over Iliff in view of Schlueter, and
claim 12 over Iliff in view of Schlueter and Siegrist.

OPINION

We reverse the aforementioned rejections. We need to address only the independent claims, i.e., claims 1 and 15.

Claims 1 and 15 require a database search that discloses a medical resource that treats a medical condition.

Iliff discloses a medical diagnosis and treatment advice system that provides medical advice for approximately one hundred of the most commonly encountered problems in general practice and emergency medicine, and may provide information to the public on any number of other medical topics (col. 4, lines 25-30). If the system determines that a serious medical condition exists, it plays a message that advises the patient to seek immediate medical attention and ends the evaluation process (col. 36, lines 9-13).

Schlueter seeks "to gather, organize, and present data which is collected over a long period of time in a way that best facilitates accurate diagnosis and proper treatment of such medical conditions which require long-term profiling of medical readings" (col. 2, lines 13-17). "Once the information is present in the database, all the medical practitioner needs to do is access the information via a network, telephone, or Internet connection and software capable of presenting processed data in a format that facilitates diagnosis, such as a graph or a chart" (col. 3, lines 13-17).¹

¹ Siegrist, which is applied to a dependent claim, discloses a computer-based method for comparing a service provider, such as a hospital, to its peers in several areas of competition for a particular consumer group (col. 1, lines 46-52; col. 2, lines 40-44).

The examiner argues that Iliff discloses "searching the database for the information wherein the search or request is based on the query or search request input into the database and further wherein the search discloses a medical resource that treats the medical condition queried (Iliff, Figure 31, Items 2510 and 2546, column 36, lines 9-13, column 60, lines 57-63, column 75, lines 18-28)" (answer, pages 4-5). Those portions of Iliff teach that the system provides medical advice which can be recommended tests or a recommendation that the patient seek immediate medical attention, but do not teach that the system discloses a medical resource that treats a medical condition.

The examiner argues that "[t]he access and retrieval of information from the database on request, as recited by Iliff, reads on searching the database for the information wherein the search is based on the query input into the database and further wherein the search discloses a medical resource that treats the medical condition queried" (answer, page 13). This argument is not well taken because the advice retrieved from Iliff's database does not treat a medical condition.

To establish a *prima facie* case of obviousness of the claimed invention the examiner needs prior art that discloses, or would have fairly suggested, to one of ordinary skill in the art,

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Application No. 09/544,509

a system that discloses, in response to a query related to a medical condition, a medical resource, such as a doctor or a hospital, that treats the medical condition queried, and the examiner has not provided such prior art.


For the above reasons we conclude that the examiner has not carried the burden of establishing a *prima facie* case of obviousness of the appellant's claimed invention.

DECISION

The rejections under 35 U.S.C. § 103 of claims 1-11 and 13-20 over Iliff in view of Schlueter, and claim 12 over Iliff in view of Schlueter and Siegrist, are reversed.

REVERSED


Terry J. Owens
Administrative Patent Judge


Joseph F. Ruggiero
Administrative Patent Judge


Joseph L. Dixon
Administrative Patent Judge

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Appeal No. 2 004-1826
Application No. 09/544,509

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A Professional Corporation
1914 North Milwaukee Avenue
Chicago, IL 60647